

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of the Commission's)	IB Docket No. 02-34
Space Station Licensing Rules and)	
Policies)	

**COMMENTS OR, IN THE ALTERNATIVE, PETITION FOR CLARIFICATION
OR RECONSIDERATION OF TELESAT CANADA**

Telesat Canada ("Telesat"), by its attorneys, is pleased to provide its views on the above-captioned proceeding.¹ In a Report and Order and Further Notice of Proposed Rulemaking released May 19, 2003, the Federal Communications Commission ("FCC" or "the Commission") adopted new "streamlined" space station application rules and invited further "comment on revising the bond requirements applicable to non-U.S.-licensed satellite operators seeking access to the U.S. market, to be consistent with any other revisions to the bond requirement the Commission adopts in this proceeding."² Telesat participated in the earlier phase of this proceeding.³ This document addresses the application of financial incentives (bond or escrow) designed to promote compliance with satellite milestones to non-U.S. licensed satellite operators. To the extent that the instant filing would be more appropriately treated as a Petition for

¹ *Amendment of the Commission's Space Station Licensing Rules and Policies*, FCC 03-102, IB Docket No. 02-34 (May 19, 2003) (First Report and Order and Further Notice of Proposed Rulemaking) ("*Satellite Licensing Rules Order and Bond FNPRM*").

² *Satellite Licensing Rules Order and Bond FNPRM*, at para. 336.

³ See Comments of Telesat Canada , IB Docket No. 02-34 (June 3, 2002); Reply Comments of Telesat Canada, IB Docket No. 02-34 (July 2, 2002).

Clarification or Reconsideration of the bond requirement of the new rules, Telesat respectfully requests such consideration.⁴

By way of background, Telesat notes that there are three mechanisms through which a non-U.S. licensed satellite operator may gain access to the U.S. market. First, the non-U.S. satellite operator may participate in a space station processing round by filing a “letter of intent” to use an existing or planned non-U.S.-licensed satellite to provide service in the United States.⁵ Second, a U.S. earth station operator may seek to add a non-U.S. satellite as a point of communication in its license.⁶ Third, a non-U.S. satellite operator may file a petition for declaratory ruling seeking inclusion of an existing or planned satellite on the Permitted Space Station List (“Permitted List”).⁷

Telesat urges the Commission to clarify that it will not regulate the spacecraft construction process of non-U.S. GSO space station operators. In other words, the Commission should specify that neither milestones nor bonds are required under the second and third approach above, namely: when foreign-licensed satellite operators seek to gain U.S. market

⁴ 47 C.F.R. § 1.429 (permitting interested parties to file petitions for reconsideration of final rulemaking actions within 30 days); 47 C.F.R. § 1.421 (permitting interested parties to file comments within 30 days on a further notice of proposed rulemaking). Telesat notes that petitions for reconsideration and comments on the further notice of proposed rulemaking in this docket are both due on Friday, September 26, 2003. The FCC has discretion to treat this pleading as either a petition for reconsideration or comments. 47 C.F.R. § 1.1 (“Procedures to be followed by the Commission shall, unless specifically prescribed in this part, be such as in the opinion of the Commission will best serve the purposes of the proceedings”).

⁵ *Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Satellites To Provide Domestic and International Satellite Service in the United States*, Report and Order, 12 FCC Rcd 24094, 24174 (1997) (“*DISCO II*”). A service provider may also file an earth station application in a processing round seeking to use the non-U.S. licensed satellite.

⁶ *DISCO II*, 12 FCC Rcd at 24174.

⁷ *Amendment of the Commission’s Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States*, 15 FCC Rcd 7207 (1999) (First Order on Reconsideration) (“*DISCO II First Reconsideration Order*”).

access by, for example, being added to the Permitted List; or when an earth station operator seeks to add a non-U.S. licensed satellite as an authorized point of communication.

The FCC's staged construction milestones, enforced by bond or escrow, were designed to protect against "speculation and warehousing".⁸ But, forcing a foreign satellite operator to establish milestones and post a bond when requesting U.S. market access will not serve this goal. This is because non-U.S. satellite operators entering the U.S. market through the Permitted List or a declaratory ruling do not obtain a U.S. satellite license or any U.S. orbital location. In such circumstances, it is the foreign administration—not the FCC—that assigns spectrum or orbital slots to the foreign-licensed satellite system; no U.S. spectrum could be warehoused or the subject of speculation. Indeed, the FCC theoretically could license a U.S. entity for the same spectrum or slot,⁹ though the ultimate use of the spectrum will be determined based on the priority status of each administration at the ITU.¹⁰ Moreover, the right to serve the U.S. market with a foreign licensed satellite will not alter the ability (or lack thereof) to speculate in a foreign license because the transferability of the foreign license lies solely within the jurisdiction of the

⁸ *Satellite Licensing Rules and Bond FNPRM*, para 170.

⁹ "ITU date priority does not preclude us from licensing the operator of a U.S.-licensed GSO satellite on a temporary basis pending launch and operation of a satellite with higher priority in cases where the non-U.S.-licensed satellite has not been launched yet." *Satellite License Rules and Bond FNPRM*, para. 295.

¹⁰ See *Satellite License Rules and NPRM*, para. 295 ("When we have authorized a U.S. licensee to operate at an orbit location at which another Administration has ITU priority, we have issued the license subject to the outcome of the international coordination process, and emphasized that the Commission is not responsible for the success or failure of the required international coordination."); *International Bureau Explains Procedure For Ka-Band GSO-Like Satellite Applications*, Report No. SPB-189, DA No. 03-2360 (Aug. 12, 2003) (Public Notice) (reminding licensees "that locations listed as "available" do not necessarily indicate date-priority for a U.S. satellite at that location pursuant to the International Telecommunication Union's international coordination procedures"); *KaStarCom World Satellite, LLC; Application for Authority to Construct, Launch, and Operate a Ka-Band Satellite System in the Fixed-Satellite Service*, Order and Authorization, 16 FCC Rcd 14322, 14330 (2001) (conditioning KaStarCom's U.S. license on coordination with any non-U.S. satellite within two degrees having filing date priority at the ITU).

licensing administration. As such, where a non-U.S. satellite operator merely seeks U.S. market access, as opposed to a U.S. license, neither milestones nor financial guarantees such as a bond serve any purpose.¹¹

In addition, requiring a bond or escrow when a U.S. earth station licensee seeks to add a foreign-licensed satellite as a point of communication to an earth station license makes no sense for two reasons. First, earth station licensees would not normally seek to access a foreign satellite until the non-U.S. satellite is on orbit.¹² Second, a U.S. earth station licensee plainly cannot guarantee any (theoretical) obligation of a foreign-licensed satellite operator: the U.S. earth station operator likely will have neither control over nor any relationship with—other than a services contract—the foreign satellite licensee. Requiring a bond in such circumstances would, as a practical matter, foreclose U.S. earth station licensees from initiating market access requests.

Instead, Telesat believes that the Commission intended to establish milestones and require bonds *only* in the narrow circumstance where a non-U.S. satellite operator files a letter of intent to participate in a processing round.¹³ The First Report and Order adopting the bond requirement explains that:

non-U.S. licensed satellite operators *filing letters of intent* to request U.S.-market access with a satellite that is not in orbit and operating also [will] be required to

¹¹ In other words, foreign-satellite landing rights are not comparable to space station licensing, and nothing in U.S. law or the WTO requires that they be treated identically.

¹² *DISCO II*, 12 FCC Rcd at 24174 (noting that the earth station license procedure “would be used where an earth station to be located in the United States seeks to access a non-U.S. satellite that is already operating”).

¹³ The FCC has described the bond requirement as “in effect an additional milestone requirement,” *Satellite Licensing Rules Order and Bond FNPRM*, para. 170, and noted that the “bond will be payable if a non-U.S.-licensed satellite operator misses a milestone...” *Id.* at para. 309.

post a bond...at the time they are granted access to the U.S. market. This bond will be payable if a non-U.S. licensed satellite operator misses a milestone...¹⁴

This language reflects the fact that the FCC has previously imposed milestones on filers of letters of intent,¹⁵ but never on planned non-U.S. satellites included on the Permitted List.¹⁶

Nonetheless, the Commission's legitimate determination to apply milestones evenhandedly between U.S. and non-U.S. entities does not—and should not be read incorrectly to—expand milestone obligations to cover non-U.S. satellite operators seeking only access to the U.S. market. Neither Telesat nor the Commission ever contemplated applying milestones to non-U.S.-licensees seeking market entry via, for example, the Permitted List.¹⁷ Indeed, the Commission itself characterized the new milestones as “consistent with our current policy,” citing only a decision applying milestones to a non-U.S. satellite operator filing a letter of intent.¹⁸

¹⁴ *Satellite Licensing Rules Order and Bond FNPRM*, para. 309 (emphasis added).

¹⁵ *Pacific Century Group, Inc., Letter of Intent as a Foreign Satellite Operator to Provide Fixed Satellite Services in the Ka-Band in the United States*, Order, 16 FCC Rcd 14356, 14364 (Int'l Bur., 2001) (requiring a U.K. satellite provider filing a letter of intent in a processing round and receiving a spectrum reservation to meet the same milestones as U.S. licensees in the same processing round).

¹⁶ See, e.g., *Spacecom Satellite Communications Services S.C.C. Ltd., Petition for Declaratory Ruling For Inclusion of AMOS-2 on the Permitted Space Station List*, DA 03-2274 (July 10, 2003) (adding AMOS-2 to the Permitted List prior to launch without milestones); *Telesat Canada, Petition for Declaratory Ruling For Inclusion of Anik F2 on the Permitted Space Station List*, Order, 17 FCC Rcd 25287 (Int'l Bur. 2002).

¹⁷ The FCC relied in paragraph 311 of the *Bond FNPRM* on Telesat's comments as support for its decision to apply milestones to non-U.S. entities seeking a space station authorization. Telesat stated: “Milestones requirements should be consistently applied to U.S. and non-U.S. applicants seeking a U.S. space station license.” It should be noted, though, that in the next sentence Telesat went on to say “However, the milestones which govern non-U.S.-licensed satellites should be those imposed by the licensing administration, which are bounded in any event by the ITU time limits.” Telesat Comments, at 5 (filed June 3, 2002).

¹⁸ *Satellite Licensing Rules Order and Bond FNPRM*, para. 311.

Accordingly, Telesat requests that the FCC clarify Section 25.137 of its rules to require a bond only when non-U.S. companies obtain U.S. licenses. As currently drafted, rule Section 25.137(d) does not appear to apply at all in that situation and could be interpreted erroneously to require a bond when a U.S. earth station licensee seeks to add a non-U.S. satellite as a point of communication:

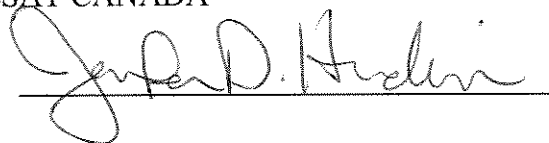
(d) *Earth station applicants* requesting authority to operate with a non-U.S. licensed space station must demonstrate that the space station the applicant seeks to access has complied with all applicable Commission requirements for non-U.S.-licensed systems to operate in the United States, including but not limited to the following:...(4) Posting a bond...compliant with the terms of Section 25.149 of this Chapter.¹⁹

Telesat suggests that the FCC clarify the rule, or in the alternative, re-write the rule to limit the obligation of entities seeking market access for foreign-licensed satellites solely to those participating in a NGSO-like processing round. Telesat also requests that the FCC confirm that milestones will not apply to non-U.S. satellite operators seeking to add planned satellites to the Permitted List.

Respectfully submitted,

TELESAT CANADA

By:



Bert W. Rein

Carl R. Frank

Jennifer D. Hindin

of

WILEY REIN & FIELDING LLP

1776 K Street, N.W.

Washington, DC 20006-2304

202.719.7000

Its Attorneys

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¹⁹ *Satellite Licensing Rules Order and Bond FNPRM*, Appendix B Rules Changes, p. 133 (amended regulations at 47 C.F.R. § 25.137(d) to become effective Sept. 26, 2003) (emphasis added).